



State of Wisconsin
1997 - 1998 LEGISLATURE

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ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 458

October 22, 1997 - Offered by COMMITTEE ON FINANCIAL INSTITUTIONS.

1 **AN ACT** *to amend* 20.907 (1), 36.29 (1), 40.82 (2), 66.04 (2) (b), 881.02 and 881.06;
2 *and to repeal and recreate* 881.01 of the statutes; **relating to:** regulating the
3 investments of personal representatives, trustees and guardians.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 20.907 (1) of the statutes is amended to read:

5 20.907 (1) ACCEPTANCE AND INVESTMENT. Unless otherwise provided by law, all
6 gifts, grants, bequests and devises to the state or to any state agency for the benefit
7 or advantage of the state, whether made to trustees or otherwise, shall be legal and
8 valid when approved by the joint committee on finance and shall be executed and
9 enforced according to the provisions of the instrument making the same, including
10 all provisions and directions in any such instrument for accumulation of the income
11 of any fund or rents and profits of any real estate without being subject to the
12 limitations and restrictions provided by law in other cases; but no such accumulation

1 shall be allowed to produce a fund more than 20 times as great as that originally
2 given. ~~When such gifts, grants, bequests or devises include common stocks or other~~
3 ~~investments which are not authorized by s. 881.01, such common stocks or other~~
4 ~~investments may be held and may be exchanged, invested or reinvested in similar~~
5 ~~types of investments without being subject to the limitations provided by law in other~~
6 ~~cases.~~

7 **SECTION 2.** 36.29 (1) of the statutes is amended to read:

8 36.29 (1) All gifts, grants and bequests for the benefit or advantage of the
9 system or any of its institutions, departments or facilities or to provide any means
10 of instruction, illustration or knowledge in connection therewith, whether made to
11 trustees or otherwise, shall be valid notwithstanding any other provision of this
12 chapter except as otherwise provided in this subsection and shall be executed and
13 enforced according to the provisions of the instrument making the same, including
14 all provisions and directions in any such instrument for accumulation of the income
15 of any fund or rents and profits of any real estate without being subject to the
16 limitations and restrictions provided by law in other cases; but no such income
17 accumulation shall be allowed to produce a fund more than 20 times as great as that
18 originally given. When such gifts, grants or bequests include common stocks or other
19 investments which are not authorized by ch. 881, the board may continue to hold
20 such common stocks or other investments and exchange, invest or reinvest the funds
21 of such gift, grant or bequest in similar types of investments without being subject
22 to the limitations and restrictions provided by law in other cases. No such
23 investment shall knowingly be made in any company, corporation, subsidiary or
24 affiliate which practices or condones through its actions discrimination on the basis
25 of race, religion, color, creed or sex. Except as otherwise provided in this section, the

1 board may invest not to exceed 85% of trust funds held and administered by the board
2 in common stocks, ~~the limitation of 50% in s. 881.01 (2) to the contrary~~
3 ~~notwithstanding~~. This subsection does not apply to a gift, grant or bequest that the
4 board declines to accept or that the board is not authorized to accept under this
5 section.

6 **SECTION 3.** 40.82 (2) of the statutes is amended to read:

7 40.82 (2) Compensation which is withheld under a deferred compensation plan
8 contract between an employer and an employee may be invested by the employer or
9 a person other than the employer who is authorized by contract to administer the
10 funds. The employer may determine the types of investments in which the deferred
11 compensation funds may be invested. The deferred compensation funds may be
12 invested and reinvested in the same manner provided for investments under s.
13 881.01 (1).

14 **SECTION 4.** 66.04 (2) (b) of the statutes is amended to read:

15 66.04 (2) (b) Any town, city or village may invest surplus funds in any bonds
16 or securities issued under the authority of the municipality, whether the bonds or
17 securities create a general municipality liability or a liability of the property owners
18 of the municipality for special improvements, and may sell or hypothecate the bonds
19 or securities. Funds of any employer, as defined by s. 40.02 (28), in a deferred
20 compensation plan may also be invested and reinvested in the same manner
21 authorized for investments under s. 881.01 (1).

22 **SECTION 5.** 881.01 of the statutes is repealed and recreated to read:

23 **881.01 Uniform prudent investor act. (1) DEFINITION.** In this section,
24 “fiduciary” means personal representative, trustee or guardian.

1 **(2) PRUDENT INVESTOR RULE.** (a) Except as otherwise provided in par. (b), a
2 fiduciary who invests and manages assets owes a duty to the beneficiaries to comply
3 with the prudent investor rule set forth in this section.

4 (b) The prudent investor rule, a default rule, may be expanded, restricted,
5 eliminated or otherwise altered by the provisions of a will, trust or court order. A
6 fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in
7 reasonable reliance on the provisions of the will, trust or court order.

8 **(3) STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES.** (a) A
9 fiduciary shall invest and manage assets as a prudent investor would, by considering
10 the purposes, terms, distribution requirements and other circumstances of the
11 estate, trust or guardianship. In satisfying this standard, the fiduciary shall exercise
12 reasonable care, skill and caution.

13 (b) A fiduciary's investment and management decisions about individual assets
14 shall be evaluated not in isolation but in the context of the portfolio as a whole and
15 as a part of an overall investment strategy having risk and return objectives
16 reasonably suited to the estate, trust or guardianships.

17 (c) Among circumstances that a fiduciary shall consider in investing and
18 managing assets are those of the following that are relevant to the estate, trust or
19 guardianship or its beneficiaries:

- 20 1. General economic conditions.
- 21 2. The possible effect of inflation or deflation.
- 22 3. The expected tax consequences of investment decisions or strategies.
- 23 4. The role that each investment or course of action plays within the overall
- 24 portfolio, which may include financial assets, interests in closely held enterprises,
- 25 tangible and intangible personal property and real property.

1 5. The expected total return from income and the appreciation of capital.

2 6. Other resources of the beneficiaries.

3 7. Needs for liquidity, regularity of income and preservation or appreciation of
4 capital.

5 8. An asset's special relationship or special value to the purposes of the estate,
6 trust or guardianship or to one or more of the beneficiaries.

7 (d) A fiduciary shall make a reasonable effort to verify facts relevant to the
8 investment and management of assets.

9 (e) A fiduciary may invest in any kind of property or type of investment
10 consistent with the standards of this section.

11 (f) A fiduciary who has special skills or expertise, or is named fiduciary in
12 reliance upon the fiduciary's representation that the fiduciary has special skills or
13 expertise, has a duty to use those special skills or expertise.

14 **(4) DIVERSIFICATION.** A fiduciary shall diversify investments unless the
15 fiduciary reasonably determines that, because of special circumstances, the
16 purposes of the estate, trust or guardianship are better served without diversifying.

17 **(5) DUTIES AT INCEPTION.** Within a reasonable time after accepting a fiduciary
18 appointment or receiving assets, a fiduciary shall review the assets and make and
19 implement decisions concerning the retention and disposition of assets, in order to
20 bring the portfolio into compliance with the purposes, terms, distribution
21 requirements and other circumstances of the estate, trust or guardianship and with
22 the requirements of this section.

23 **(6) LOYALTY.** A fiduciary shall invest and manage the assets solely in the
24 interest of the beneficiaries.

1 **(7) IMPARTIALITY.** If an estate, trust or guardianship has 2 or more beneficiaries,
2 the fiduciary shall act impartially in investing and managing the assets, taking into
3 account the differences between the interests of the beneficiaries.

4 **(8) INVESTMENT COSTS.** In investing and managing assets, a fiduciary may incur
5 only costs that are appropriate and reasonable in relation to the assets, the purposes
6 of the estate, trust or guardianship and the skills of the fiduciary.

7 **(9) REVIEWING COMPLIANCE.** Compliance with the prudent investor rule is
8 determined in light of the facts and circumstances existing at the time of a fiduciary's
9 decision or action and not by hindsight.

10 **(10) DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS.** (a) A fiduciary
11 may delegate investment and management functions that a prudent fiduciary of
12 similar skills could properly delegate under the circumstances. The fiduciary shall
13 exercise reasonable care, skill and caution in all of the following:

14 1. Selecting an agent.

15 2. Establishing the scope and terms of the delegation, consistent with the
16 purposes and terms of the estate, trust or guardianship.

17 3. Periodically reviewing the agent's actions in order to monitor the agent's
18 performance and compliance with the terms of the delegation.

19 (b) In performing a delegated function, an agent owes a duty to the estate, trust
20 or guardianship to exercise reasonable care to comply with the terms of the
21 delegation.

22 (c) A fiduciary who complies with the requirements of par. (a) is not liable to
23 the beneficiaries or to the estate, trust or guardianship for the decisions or actions
24 of the agent to whom the function was delegated.

1 (d) By accepting the delegation of a function from the fiduciary of an estate,
2 trust or guardianship that is subject to the law of this state, an agent submits to the
3 jurisdiction of the courts of this state.

4 **(11) PHRASES INVOKING STANDARD OF THIS SECTION.** The following phrases or
5 similar phrases in a will, trust or court order, unless otherwise limited or modified,
6 authorize any investment or strategy permitted under this section: “investments
7 permissible by law for investment of trust funds”; “legal investments”; “authorized
8 investments”; “using the judgment and care under the circumstances then
9 prevailing that persons of prudence, discretion, and intelligence exercise in the
10 management of their own affairs, not in regard to speculation but in regard to the
11 permanent disposition of their funds, considering the probable income as well as the
12 probable safety of their capital”; “prudent man rule”; “prudent trustee rule”;
13 “prudent person rule”; and “prudent investor rule”.

14 **(12) APPLICATION TO EXISTING ESTATES, TRUSTS AND GUARDIANSHIPS.** This section
15 applies to estates, trusts and guardianships existing on, or created on or after, the
16 effective date of this subsection [revisor inserts date]. As applied to estates, trusts
17 and guardianships existing on the effective date of this subsection [revisor inserts
18 date], this section governs only decisions or actions occurring after that date.

19 **(13) UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This section shall be
20 applied and construed to effectuate its general purpose to make uniform the law with
21 respect to the subject of this section among the states that have enacted this uniform
22 legislation.

23 **SECTION 6.** 881.02 of the statutes is amended to read:

24 **881.02 Construction; court orders; written instruments.** Nothing
25 contained in this chapter shall be construed as authorizing any departure from, or

1 variation of, the express terms or limitations set forth in any will, agreement, court
2 order or other instrument creating or defining the fiduciary's duties and powers, but
3 the terms "legal investment" or "authorized investment" or words of similar import,
4 as used in any such instrument, shall be taken to mean any investment which is
5 permitted by the terms of this chapter.

6 **SECTION 7.** 881.06 of the statutes is amended to read:

7 **881.06 Law governing existing instruments.** ~~This~~ Subject to s. 881.01 (12),
8 this chapter shall govern fiduciaries, including personal representatives, guardians,
9 and trustees acting under wills, agreements, court orders and other instruments now
10 existing or hereafter made.

11 (END)